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> DA 18-1116 October 31, 2018

AUCTION OF 24 GHz UPPER MICROWAVE FLEXIBLE USE SERVICE LICENSES FOR NEXT-GENERATION WIRELESS SERVICES

APPLICATIONS OF 58 APPLICANTS FOR AUCTION 102 DEEMED TO BE COMPLETE

AU Docket No. 18-85

1. By this Public Notice, the Wireless Telecommunications Bureau (Bureau) announces that 58 of the 60 applications received for Auction 102 have been deemed to be complete.\(^1\) Auction 102 will offer 2,909 Upper Microwave Flexible Use Service (UMFUS) licenses in the 24.25–24.45 GHz and 24.75–25.25 GHz (24 GHz) band.\(^2\) Bidding in Auction 102 will be scheduled to begin after the conclusion of bidding in Auction 101. This Public Notice provides other important information and reminders relating to Auction 102. It also addresses the continuing obligations and auction procedures for all Auction 102 applicants, including those that have been deemed to be incomplete and thus not eligible to bid.

I. COMPLETE AND INCOMPLETE APPLICATIONS

2. The short-form applications to participate in Auction 102 (FCC Forms 175) have been reviewed for completeness and compliance with the Commission's rules, and they have been classified into the categories listed below.

Complete	58 applications
Incomplete	2 applications

To become a qualified bidder in Auction 102, each applicant whose application has been deemed complete must also submit a timely and sufficient upfront payment.³ The deadline for submitting upfront

¹ A copy of this Public Notice will be sent by overnight delivery to the contact person listed on the FCC Form 175 for each Auction 102 applicant. The status of applications to participate in Auction 101 (28 GHz) is addressed in a separate public notice. *Auction of 28 GHz Upper Microwave Flexible Use Service Licenses for Next-Generation Wireless Services; 40 Applicants Qualified to Bid in Auction 101*, Public Notice, DA 18-1115 (WTB, Oct. 31, 2018).

² See Auctions of Upper Microwave Flexible Use Licenses for Next-Generation Wireless Services; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auctions 101 (28 GHz) and 102 (24 GHz); Bidding in Auction 101 Scheduled to Begin November 14, 2018, Public Notice, FCC 18-109 at 3, 5, paras. 1-2, 7 (Aug. 3, 2018) (Auctions 101 and 102 Procedures Public Notice); Wireless Telecommunications Bureau Releases Updated List of Licenses to Be Offered in Auction 102 (24 GHz); Announces Adjustment to the Categories and Number of Generic License Blocks, Public Notice, DA 18-835 at 1-2, paras. 1-3 (WTB Aug. 10, 2018).

³ Auctions 101 and 102 Procedures Public Notice at 50-51, para. 144. An upfront payment is a refundable deposit made by each bidder to establish its eligibility to bid on licenses. *Id.* at 53, para. 152.

payments for Auction 102 will be provided, along with detailed instructions about submitting upfront payments, in a forthcoming public notice.⁴

- 3. **Complete Applications.** Attachment A to this Public Notice lists the name of each applicant whose short-form application to participate in Auction 102 is complete.⁵ Attachment A also indicates whether the applicant has claimed eligibility for a rural service provider or small business bidding credit. For those claiming a small business status, the attachment lists each qualified bidder's claimed bidding credit revenue range. Designation of an application as complete indicates the applicant has provided the certifications and basic information concerning its qualifications as required by the Commission's competitive bidding rules for participation in the auction.⁶
- 4. **Incomplete Applications.** Attachment B to this Public Notice lists the name of each applicant whose application has been found to be incomplete. Each of these applicants no longer has an opportunity to cure application defects and cannot become qualified to bid in Auction 102.⁷ All applicants, including those that have been deemed not eligible to bid, remain subject to the Commission's rules prohibiting certain communications in connection with Commission auctions.⁸

II. OTHER IMPORTANT AUCTION 102 INFORMATION

A. Future Announcement of Qualified Bidders

- 5. A public notice announcing all applicants qualified to bid in Auction 102 will be released after the upfront payment deadline for Auction 102. This same public notice will also announce additional dates and details about Auction 102, including bidding schedules for both the mock auction and the first day of bidding in Auction 102.
- 6. All qualified bidders will be automatically registered for the auction. The Bureau will send, by overnight delivery, registration materials to the contact person listed on each qualified bidder's FCC Form 175. The package will include an RSA token issued by the Bureau specifically assigned to each of the authorized bidders identified on the qualified bidder's FCC Form 175. The RSA token will allow each authorized bidder to log in and access the FCC auction bidding system in order to participate

⁴ Id. at 13, para. 27 & n.58.

⁵ To help applicants understand the status of applications as set out in attachments to this public notice and prepare for Auction 102, we note certain changes to specific applications. Applicant Canby Telephone Association DBA DirectLink corrected a typographical error in its applicant name. Applicant Windstream Services, LLC changed its legal classification to Limited Liability Company to correct an error in its Auction 102 application. Applicant Western Independent Networks, Inc. -OR changed its eligibility selection for the small business bidding credit from 25 percent to 15 percent.

⁶ See 47 CFR §§ 1.2105, 1.2112. Under the Commission's two-phased auction application process, a winning bidder must submit a long-form application after the close of bidding in an auction to demonstrate its qualifications to hold a Commission license and, if a bidding credit is requested, its eligibility for the requested bidding credit. Thus, a determination that a short-form application to participate in Auction 102 is complete and complies with the Commission's competitive bidding rules and policies is not determinative of an applicant's qualifications to hold a license or entitlement to a bidding credit. See 47 CFR §§ 1.2107–1.2109; Implementation of Section 309(j) of the Communications Act – Competitive Bidding, Second Report and Order, 9 FCC Rcd 2348, 2376-77, paras. 163-68 (1994). Commission staff generally considers an applicant's qualifications and eligibility for a bidding credit after the auction during the long-form application process. If an applicant is found unqualified to be a Commission licensee or ineligible for any claimed bidding credit, it will be liable for any obligations incurred as a result of its participation in the auction. See generally 47 CFR § 1.2109.

⁷ See Auctions 101 and 102 Procedures Public Notice at 50, para. 141.

⁸ See 47 CFR § 1.2105(c); see also Auctions 101 and 102 Procedures Public Notice at 25, para. 59 n.137.

⁹ Auctions 101 and 102 Procedures Public Notice at 56, para. 159.

in any mock auction and place bids in Auction 102. For security purposes, the RSA tokens, the telephonic bidding telephone number, and other auction-related materials will be sent only to the applicant's contact person at the contact address listed on its auction application.

B. Availability of Auction 102 Application Information

7. All FCC Form 175 applications submitted during the initial application filing window became publicly available on October 10, 2018. Modifications to FCC Form 175 applications and other information submitted after the initial filing deadline on September 18, 2018, will become publicly available after the release of the public notice announcing qualified bidders for Auction 102. Applicants should note that, once the modified FCC Form 175 applications become publicly available, any subsequent changes made to their auction applications in the FCC auction application system will become publicly available after submission.

III. APPLICANTS' CONTINUING OBLIGATIONS

A. Duty to Maintain Accurate Information in Short-Form Applications

- 8. We remind applicants that Sections 1.65 and 1.2105(b) of the Commission's rules require an applicant to maintain the accuracy and completeness of information furnished in its pending short-form application to participate in Auction 102.¹¹ Each applicant should amend its short-form application to furnish additional or corrected information within five days of a significant occurrence, or no more than five days after the applicant becomes aware of the need for amendment.¹² All changes are subject to review by Commission staff.
- 9. An applicant that needs to make permissible minor changes to its FCC Form 175 or that must make changes in order to maintain the accuracy and completeness of its short-form application during a time when the FCC auction application system is available to the applicant for purposes of making the type of change(s) required, should make such changes to its FCC Form 175 electronically using the FCC auction application system. Between the closing of the resubmission filing window and the release of the public notice announcing qualified bidders for Auction 102, the only changes an applicant can make using the FCC auction application system are changes to its address, responsible party information, contact information, authorized bidders, and bidding option (telephonic or electronic). For all other application changes prior to the release of the public notice announcing qualified bidders for

¹⁰ Consistent with the Commission's limited information procedures in place for Auctions 101 and 102, the following application information will continue to be withheld from public disclosure until after the close of Auction 102: an applicant's license area selection, the amount of any upfront payment made by or on behalf of an applicant, any information on an applicant's bidding eligibility, and any other bidding-related information that might reveal the identity of the bidders placing bids and taking other bidding-related actions. *Id.* at 22, para. 50.

^{11 47} CFR §§ 1.65, 1.2105(b).

¹² *Id*.

¹³ As described in the Commission's rules, an applicant may make only minor corrections to its short-form application (e.g., changing certain contact information or authorized bidder information). *See* 47 CFR § 1.2105(b). A major modification includes a change in license area selection, newly claimed or increased bidding credit, or change in control of the applicant. *Id.*; *see also*, *e.g.*, Letter from Margaret W. Wiener, Chief, Auctions and Spectrum Access Div., and Peter H. Doyle, Chief, Audio Div., to Koch Broadcasting Corp. and Birach Broadcasting Corp., 21 FCC Rcd 147 (WTB/MB 2006) (dismissing short-form application filed for AM Auction 84 due to major amendment changing control).

¹⁴ An applicant should not use the auction application system outside of the initial and resubmission filing windows to make changes to its short-form application for other than administrative changes. Auction applicants are not permitted to make a change to the following data fields after the short-form application filing deadline: applicant name, legal classification, certifier, bidding credit, and license area selection.

Auction 102, an applicant must submit a letter briefly summarizing the changes to its FCC Form 175 by email to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, at the following address: auction102@fcc.gov. ¹⁵ An applicant must not submit application-specific material through the Commission's Electronic Comment Filing System.

10. For more information on an applicant's continuing obligation to maintain the accuracy and completeness of information furnished in its application to participate in Auction 102, applicants should refer to previous Auction 102 public notices, including the *Auctions 101 and 102 Procedures Public Notice* and the *Auctions 101 and 102 Status Public Notice*. 16

B. Due Diligence

evaluating all legal, technical, and marketplace factors and risks associated with the licenses that it is seeking in Auction 102; evaluating the degree to which those factors and risks may have a bearing on the value of the licenses being offered and/or affect the bidder's ability to bid on, otherwise acquire, or make use of such licenses; and conducting any technical analyses necessary to assure itself that, if it wins any license(s), it will be able to build and operate facilities in accordance with the Commission's rules.¹⁷ In addition, each potential bidder's due diligence efforts should include, among other things: (1) reviewing all Commission orders and public notices establishing rules and policies for the UMFUS bands, including but not limited to potential impairments affecting certain licenses; (2) conducting research to determine the existence of any pending administrative or judicial proceedings, including pending allocation rulemaking proceedings, that might affect its decision to participate in the auction; (3) performing (or refreshing previous) technical analyses; and (4) inspecting any prospective transmitter sites located in, or near, the service area for which it plans to bid and confirming the availability of such sites and their

¹⁵ The letter summarizing the changes must include a subject or caption referring to Auction 102 and the name of the applicant, for example, "Re: Changes to Auction 102 Application of XYZ Corp." Any attachments to email must be formatted as Adobe® Acrobat® (PDF) or Microsoft® Word documents. An applicant that submits its changes in this manner must subsequently update its FCC Form 175 application in the FCC auction application system once it is open and available to applicants again.

¹⁶ See Auctions 101 and 102 Procedures Public Notice at 43-45, para. 112-20; Auctions of Upper Microwave Flexible Use Licenses for Next-Generation Wireless Services; Status of Short-Form Applications to Participate in Auctions 101 (28 GHz) and 102 (24 GHz), Public Notice, DA 18-1035, at 5, para. 11 (WTB Oct. 10, 2018) (Auctions 101 and 102 Status Public Notice); see also 47 CFR §§ 1.65, 1.2105(b). Questions about FCC Form 175 amendments should be directed to the Auctions and Spectrum Access Division at (202) 418-0660 or by email to auction102@fcc.gov.

¹⁷ See Auctions 101 and 102 Procedures Public Notice at 45-46, paras. 121-25.

¹⁸ For additional information concerning the UMFUS rules and policies, including impairments affecting certain licenses available in Auction 102, applicants should refer to orders, public notices, and other releases in GN Docket No. 14-177 and AU Docket No. 18-85.

¹⁹ Pending and future administrative and judicial proceedings may relate to particular applicants or the licenses available in Auction 102 (or the terms and conditions thereof, including all applicable Commission rules and regulations), and each prospective applicant is responsible for assessing the likelihood of the various possible outcomes and for considering the potential impact on licenses available in this auction. The Commission's statutory authority under the Communications Act of 1934, as amended, to add, modify, and eliminate rules governing spectrum use, as the public interest warrants, applies equally to all licenses, whether acquired through the competitive bidding process or otherwise. *See* 47 U.S.C. § 309(j)(6)(C)-(D); *Celtronix Telemetry, Inc. v. FCC*, 272 F.3d 585 (D.C. Cir. 2001).

conformance with applicable federal, state, and local land use requirements.²⁰ Each potential bidder must undertake its own assessment of the relevance and importance of information gathered as part of its due diligence efforts.

12. The Commission makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee, subject to certain conditions and regulations. Participants in Auction 102 should continue such research throughout the auction. For further details regarding due diligence, please refer to the *Auctions 101 and 102 Procedures Public Notice*, Section III.A.²¹

C. Prohibition of Certain Communications

- 13. The Bureau reminds applicants that the rules prohibiting certain communications set forth in Section 1.2105(c) of the Commission's rules apply to each applicant that filed a short-form application (FCC Form 175) in Auction 101 and/or Auction 102.²² Section 1.2105(c)(1) provides that, subject to specified exceptions, after the deadline for filing a short-form application, "all applicants are prohibited from cooperating or collaborating with respect to, communicating with or disclosing, to each other or any nationwide provider [of communications services] that is not an applicant, or, if the applicant is a nationwide provider, any non-nationwide provider that is not an applicant, in any manner the substance of their own, or each other's, or any other applicants' bids or bidding strategies (including post-auction market structure), or discussing or negotiating settlement agreements, until after the down payment deadline[.]"²³ An "applicant" for purposes of this rule includes all "controlling interests" in the entity submitting the FCC Form 175 auction application, as well as all holders of interests amounting to 10 percent or more of the entity, and all officers and directors of that entity.²⁴ For Auctions 101 and 102, a party that submitted an application for either auction is an "applicant" for both auctions under the rule, and that status does not change based on later developments.²⁵
- 14. This prohibition took effect as of the short-form application filing deadline, which for Auctions 101 and 102 was Tuesday, September 18, at 6:00 p.m. ET, and ends at the post-auction down payment deadline for Auction 102, which will be announced in a future public notice.²⁶ **This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid in Auction 101 and/or Auction 102.**²⁷ For further information on the prohibition, applicants should refer to the *Auctions 101 and 102 Procedures Public Notice.*²⁸

²⁰ See, e.g., 47 U.S.C. §§ 332(c)(7), 1455(a); see also Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, Report and Order, 29 FCC Rcd 12865 (2014).

²¹ See Auctions 101 and 102 Procedures Public Notice at 45-46, paras. 121-25 (Due Diligence).

²² 47 CFR § 1.2105(c)(1); see also Auctions 101 and 102 Procedures Public Notice at 24, para. 57.

²³ 47 CFR § 1.2105(c). The Commission identified AT&T, Sprint, T-Mobile, and Verizon Wireless as "nationwide providers" for the purpose of implementing the Commission's competitive bidding rules in Auctions 101 and 102. *Auctions 101 and 102 Procedures Public Notice* at 19, para. 44.

²⁴ 47 CFR § 1.2105(c)(5)(i); Auctions 101 and 102 Procedures Public Notice at 25, para. 59.

²⁵ Auctions 101 and 102 Procedures Public Notice at 25, para. 59.

²⁶ Id. at 25, para. 60-61; see also 47 CFR § 1.2105(c)(1).

²⁷ A party that submits an auction application for either auction becomes an "applicant" under the rule at the application filing deadline and that status does not change based on subsequent developments. *See, e.g., Star Wireless, LLC v. FCC*, 522 F.3d 469 (D.C. Cir. 2008) (holding that Section 1.2105(c) applies to applicants regardless of whether they are qualified to bid). Thus, an auction applicant that does not correct deficiencies in its application, fails to submit a timely and sufficient upfront payment, or does not otherwise become qualified, remains an "applicant" for purposes of the rule and remains subject to the prohibition on certain communications until the

- 15. Disclosure Obligations and Possible Sanctions. Section 1.2105(c)(4) requires each auction applicant to report a prohibited communication or disclosure regarding bids or bidding strategy to the Commission in writing immediately, but in no case later than five business days after the communication occurs, even if the communication does not result in an agreement or understanding regarding bids or bidding strategy that must be reported under Section 1.65.²⁹ The Commission has clarified that each applicant's obligation to report any such communication continues beyond the five-day period after the communication is made, even if the report is not made within the five-day period.³⁰
- 16. Reporting Prohibited Communication. Any party reporting any communication pursuant to Sections 1.65, 1.2105(a)(2), or 1.2105(c)(4) must take care to ensure that any such report does not itself give rise to a violation of Section 1.2105(c). To minimize the risk of inadvertent dissemination of a report of a potential prohibited communication, Section 1.2105(c)(6) requires a party to file only a single report with the Chief of the Auctions and Spectrum Access Division in the Wireless Telecommunications Bureau.³¹ In Auction 102, any such report must be filed according to the instructions set forth in the Auctions 101 and 102 Procedures Public Notice.³² Any such report must be filed immediately, and in no case later than five business days after the communication occurs.
- 17. Any applicant found to have violated Section 1.2105(c) of the Commission's rules may be subject to sanctions.³³ In addition, we remind each applicant that it is subject to the antitrust laws, which are designed to prevent anti-competitive behavior in the marketplace. If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount, and it may be prohibited from participating in future auctions, among other sanctions.³⁴

D. Limited Information Procedures

18. We remind applicants that, under the limited information procedures in effect for Auction 102 (sometimes also referred to as anonymous bidding), the Commission is withholding from public release, until after the close of bidding in Auction 102, any information that may indicate specific applicants' interests in the auction—including, among other things, license selections, upfront payments and eligibility information, and the identities of bidders placing bids or taking other bidding-related actions. Accordingly, communication with other applicants or public disclosure of such non-public information may violate the Commission's limited information procedures and the rule prohibiting certain communications, Section 1.2105(c) of the Commission's rules.

²⁸ Auctions 101 and 102 Procedures Public Notice at 24-32, paras. 57-84.

²⁹ 47 CFR § 1.2105(b); see also Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, Seventh Report and Order, 16 FCC Red 17546, 17553-55, paras. 13-17 (2001).

³⁰ See Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, Second Report and Order, 22 FCC Rcd 15289, 15395, paras. 285-86 (2007).

³¹ 47 CFR § 1.2105(c)(6); Procedural Amendments to Commission Part 1 Competitive Bidding Rules, Order, 25 FCC Rcd 521, 522 para. 4 (2010).

³² See Auctions 101 and 102 Procedures Public Notice at 30-31, paras. 78-80.

³³ See 47 CFR §§ 1.2105(c), 1.2109(d).

³⁴ See id. § 1.2109(d).

³⁵ See Auctions 101 and 102 Procedures Public Notice at 22-24, paras. 50-56.

19. This prohibition includes communication of any such non-public information by an applicant to the public, financial analysts, or the press, as well as any such communication by an applicant to another applicant in Auction 101 or Auction 102.³⁶ Examples of communications raising concern, given the limited information procedures in effect for Auction 102, would include an applicant's statement to the press about its upfront payment or bidding eligibility, and an applicant's statement to the press that it is or is not interested in bidding in the auction.

E. **Submission of Auction-Related Filings**

A party wishing to submit a request, a complaint, or other information concerning Auction 102 should, in addition to following other procedures prescribed by the Commission's rules, send a copy by email to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, at the following address: <u>auction102@fcc.gov</u>. The Commission occasionally receives complaints regarding specific bidders and requests to suspend bidding during an auction. While the Commission reserves the right to take appropriate action during an auction to preserve the integrity of the auction process, it is generally our practice to address any such allegations only after a winning bidder has submitted its long-form application, when there is greater opportunity for investigation of such allegations, if warranted. The Commission will not investigate any complaints or allegations that are not accompanied by full contact information, including name, address, and telephone number, for the complaining party or parties.

F. Ex Parte Rule

Applicants should also be aware that the Commission has generally treated mutually exclusive short-form applications as exempt proceedings and, therefore, not subject to the ex parte prohibitions that pertain to restricted proceedings.³⁷

IV. **CONTACT INFORMATION**

- Additional information for applicants is available at the Auction 102 web page (www.fcc.gov/auction/102).
 - 23. For further information concerning Auction 102, contact:

General Auction Information

General Auction Questions

FCC Auctions Hotline (888) 225-5322, option two; or (717) 338-2868

Auction 102 Process and Procedures

Bidding Procedures Auction Schedule

Auctions and Spectrum Access Division

Auctions Hotline (717) 338-2868

³⁶ The Commission has long expressed the concern that applicants should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become a conduit for the communication of non-public information relating to auctions, such as bids and bidding strategies. See Wireless Telecommunications Bureau Responds to Questions About the Local Multipoint Distribution Service Auction, Public Notice, 13 FCC Rcd 341, 347-48 (WTB 1998) ("Public statements can give rise to collusion concerns. This has occurred in the antitrust context, where certain public statements can support other evidence which tends to indicate the existence of a conspiracy.").

³⁷ See Commission Announces that Mutually Exclusive "Short Form" Applications (Form 175) to Participate in Competitive Bidding Process ("Auctions") Are Treated as Exempt for Ex Parte Purposes, Public Notice, 9 FCC Rcd 6760 (1994). See also 47 CFR § 1.1202(d)(1) Note 1.

Auction 102 Legal Information

Auction Rules, Policies, Regulations, Including Reports of Section 1.2105(c) Violations and Application Modifications

Licensing Information

Service Rules, Policies, Regulations Licensing Issues, Engineering Issues Due Diligence, Incumbency Issues

Technical Support

Hardware/Software Issues with Electronic Filing or FCC Auction System

Auctions and Spectrum Access Division

(202) 418-0660 Erik Beith (Attorney) Kathryn Hinton (Attorney)

Broadband Division

(202) 418-2487 Nancy Zaczek (Attorney) Tim Hilfiger (Engineer)

FCC Auctions Technical Support Hotline

(877) 480-3201, option nine; or (202) 414-1250 (202) 414-1255 (TTY) Hours of service: 8:00 a.m. – 6:00 p.m. ET, Monday through Friday

24. To request materials in accessible formats (Braille, large print, electronic files, audio format) for people with disabilities, send an email to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 or (202) 418-0432 (TTY).

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